REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1761 OF 2007

COMMISSIONER OF CENTRAL EXCISE, GOA ... APPELLANT

VS.

M/S. COSME FARMA LABORATORIES LTD. ... RESPONDENT

WITH

CIVIL APPEAL NOS. 1759, 2276/2007, 5857, 7302-7303/2010 AND 7512/2009

J U D G M E N T

ANIL R. DAVE, J.

1. A common order No.A/1559 to 1563/WZB/2006 (EB) dated 14th August, 2006 in Appeal Nos. E/3292 to 3295 of

2004 passed by the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai, has been challenged in these appeals. The facts giving rise to the present appeals in a nut-shell are as under:

2. The respondent is a manufacturer of medicaments having license under the provisions of the Drugs and Cosmetics Act, 1940. The respondent not only manufactures certain medicaments but also gets certain medicaments manufactured through other job workers so the respondent is a loan licensee – who is also permitted to get drugs manufactured at different places under the provisions of the Drugs and Cosmetics Act, 1940 and Rules made thereunder. Under the agreement entered into between the respondent on one hand and the job workers on the other hand, raw material as well as packing material is supplied to the job workers and as per the instructions of the respondent loan licensee, the job workers manufacture the medicaments under the supervision of the loan licensee, i.e. the respondent so as to see that the quality of the medicaments manufactured by the job workers is as prescribed by the loan licensee.

3. Several notices had been given to the respondent as well as to the job workers by the Commissioner of Customs and Central Excise calling upon them to show cause as to why the respondent, the loan licensee should not be treated as a manufacturer as per the provisions of the Central Excise and Salt Act, 1944 in respect of the medicaments manufactured by the job workers and on that basis the respondent was also called upon to make payment of certain duty and the job workers were also called upon to show cause as to why they should not be directed to pay penalty etc.

4. After hearing the concerned parties, the Commissioner came to the conclusion that the respondent was a manufacturer of the medicaments manufactured at the premises of its job workers within the meaning of the provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder.

5. Being aggrieved by the aforesaid decision of the Commissioner dated 6th August, 2004, the respondent filed the appeals before the CESTAT, Mumbai. The Division

Bench of the CESTAT heard the appeals but both the Members of the Bench recorded separate judgments. The Member (Technical) allowed the appeals and set aside the order dated 6th August, 2004 passed by the Commissioner, whereas the Member (Judicial) upheld the said order passed by the Commissioner and held that the appeals were liable to be dismissed. In the aforesaid circumstances, as the said Members had given different opinions, the appeals were referred to a third Member for his decision. The third Member (Technical), ultimately, after hearing the concerned parties agreed with the views expressed by the Member (Technical) and the Tribunal finally allowed the appeals filed by the respondent.

6. Against the said order passed by the CESTAT, the appellant has filed the present appeals before this Court.

7. In all these cases, we are concerned with the period commencing from 1998 to 2003 and the issues involved in the appeals are whether the respondent, who was getting its medicaments manufactured through the job workers, can be considered to be an independent manufacturer and

another question is about the assessable value of the medicaments manufactured by the job workers for the purpose of assessment under the Central Excise Act, 1944.

8. The learned counsel appearing for the appellant, i.e. the Revenue, had submitted that the view expressed by the Tribunal is incorrect. As a matter of fact, the respondent should have been treated as a manufacturer in view of the fact that the raw material as well as the packing material for manufacturing the medicaments had been supplied by the respondent to the job workers and the respondent was having supervision over the manufacturing activity though the said activity was being carried out at different places, where the job workers were working.

9. The learned counsel had taken us through the provisions of Rule 69-A and Form No.24A of the Drugs and Cosmetic Rules, 1945. They pertain to the provisions with regard to the manufacturer of medicaments, who gets medicaments manufactured at different places and by different persons. He had drawn our attention to the fact

that as per the provisions of the Drugs and Cosmetics Act, 1940 and the Rules made thereunder, liability in respect of the quality of the medicament was that of the respondent and therefore, the respondent was the real manufacturer and not the job workers. He had further submitted that though the job workers were doing the work in their own premises, the raw material as well as packing material was being supplied to them by the respondent and they were working under strict supervision of the respondent loan licensee and therefore, in fact the respondent loan licensee was the manufacturer. Even in Form No.24A referred to hereinabove, the respondent used to give details of the places where the job workers were carrying out manufacturing process under the supervision of the respondent. It had been further submitted that as the loan licensee was the manufacturer of medicaments under its own brand name, the price at which the goods, i.e. the medicaments were being sold was the assessable value in respect of the medicaments in question. The learned counsel had relied upon the judgments delivered in the case of **M/s. Ujagar Prints and others v. Union of**

India and others (1989 (3) SCC 488) and **Pawan Biscuits Co. Pvt. Ltd. v. Collector of Central Excise, Patna** (2000 (6) SCC 489) to substantiate his case to the effect that the price at which the goods were sold for the first time in the market would be the assessable value of the goods in question.

10. Thus, it had been submitted by the learned counsel that the view expressed by the Tribunal was incorrect and the respondent should have been treated as a manufacturer and the value at which the goods had been sold in the market by the respondent should be treated as assessable value.

11. On the other hand, the learned counsel appearing for the respondent had submitted that the view expressed by the Tribunal was just, legal and proper and had further submitted that the appeals deserved to be dismissed. He had taken us through the provisions of the agreements entered into between the respondent and the job workers in detail. It had been submitted by him that the issue, whether the job workers are manufacturers, is an issue

pertaining to the fact and as the Tribunal had arrived at a conclusion that the job workers were the manufacturers, this Court should not re-appreciate the evidence or reconsider the issue with regard to the same. If it is done so, there would not be any finality with regard to the question of fact ascertained by the Tribunal. It had also been submitted on behalf of the respondent that the job workers were the manufacturers for the reason that the entire activity with regard to manufacturing was carried out in their premises. Supply of raw material as well as packing material to them by the respondent was not relevant. It was duty of the job workers to manufacture medicaments as per the quality prescribed by the respondent and, in fact, the manufacturing activity was done by the job workers and therefore, the Tribunal, by majority, had rightly decided that the job workers were the manufacturers. He had also tried to distinguish the judgments relied upon by the learned counsel appearing for the appellant.

12. So far as the assessable value of the goods manufactured is concerned, the learned counsel had relied

upon the judgment delivered in **Pawan Biscuits** (supra). According to him, the goods manufactured by the job workers were sent by the job workers to the respondent. The job workers were not selling the goods in the market and therefore, the value at which the goods were transferred to the respondent by the job workers would become assessable value and for determining the said value, the principles laid down by this Court in the case of **Pawan Biscuits** (supra) are to be followed.

13. Looking at the law laid down in the aforesaid judgment by this Court, the assessable value is to be determined by adding the value of raw material to the cost of labour work and profit of the job workers. Thus, for the purpose of determining the assessable value, only the aforesaid factors can be considered and not the market value at which the respondent was selling the medicaments.

14. It had been further submitted by the learned counsel appearing for the respondent that the respondent-company was a loan licensee as per the provisions of the

Drugs and Cosmetics Act, 1940 and the Rules made thereunder. He had submitted that the manufacturer of drugs/medicaments is having certain responsibilities with regard to quality of the drugs manufactured. Even if a manufacturer gets the drugs/medicaments manufactured by another person and sells the same under his brand name, the manufacturer, who has been given license to manufacture the drugs/medicaments, is responsible and is liable under the provisions of the Drugs and Cosmetics Act, 1940. A manufacturer, under the aforestated Act, has nothing to do with payment of duty under the provisions of the Central Excise Act, 1944 and therefore, the revenue authorities should not have looked into the provisions of the Drugs and Cosmetics Act, 1940 for the purpose of determining duty payable under the provisions of the Central Excise Act, 1944.

15. In view of the aforestated legal position, the learned counsel appearing for the respondent had submitted that the appeals should be dismissed as the Tribunal has rightly decided all the relevant issues.

16. We have heard the learned senior counsel for the parties at length and have also considered the order passed by the Tribunal as well as the judgments referred to by the learned counsel.

17. In our opinion, the submissions made on behalf of the respondent are correct and the appeals deserve to be dismissed for the reason that the manufacturing activity was done only by the job workers in their premises and with the help of their labour force and machinery. Simply because the job workers had to adhere to the quality control or the specification with regard to the quality prescribed by the respondent, it would not mean that the respondent is the manufacturer.

18. At the outset, we would like to clarify that the term 'manufacturer' or the loan licensee used under the provisions of the Drugs and Cosmetics Act, 1940 has nothing to do with the manufacturing activity or term 'manufacture' under the provisions of the Central Excise Act, 1944. Both the Acts referred to hereinabove have been enacted for different purposes. The provisions of the

Drugs and Cosmetics Act, 1940 pertain to manufacture of drugs and quality of the drugs etc. The manufacturer of the drugs has to see that the quality of the drugs manufactured by him is as per certain standards and if there is any defect in the drugs manufactured by him or someone working under him, he becomes responsible or liable under the said Act. There is also a provision in the said Act with regard to getting the drugs manufactured by someone else. So a manufacturer, who is having a license to manufacture, can get the drugs/medicaments manufactured by another person under his supervision and he would be liable if the drugs manufactured by someone else are not as per the prescribed quality. Though the drugs/medicaments might not have been manufactured by the one who is a licensee and the actual manufacturer is guilty of manufacturing substandard drugs, the licensee becomes responsible and liable under the provisions in the said Act.

19. On the other hand, the provisions of the Central Excise Act, 1944 are for the purpose of imposing duty on the goods manufactured. The

manufacturer becomes liable to pay certain duty as per the provisions of the said Act.

20. Thus, the term 'loan licensee' used by the learned counsel appearing for the appellant is not much relevant as we are not concerned with the quality or standard of the drugs/medicaments manufactured by the loan licensee or anybody else manufacturing medicaments for him.

21. The learned counsel appearing for the respondent had also drawn our attention to a copy of one of the agreements entered into between the respondent and the job workers. Upon going through the said agreement, we find that the said agreement shows that the job workers were not assigned the work as agents of the respondent. The said agreement shows that the relationship between the parties is that of the principal and the principal and not that of the principal and the agent. Thus, it is clear that the job workers were not manufacturing the drugs as agents of the respondent or on behalf of the respondent, but they were carrying out the manufacturing activity independently and therefore, they were manufacturers of

the drugs as per the provisions of the Central Excise Act, 1944.

22. In the light of the above factual position, it is also pertinent to find out whether the respondent is a manufacturer under the provisions of the Central Excise Act, 1944. Whether a person has manufactured a particular item or whether a person is a manufacturer is a question of fact. Once the Tribunal, after appreciating relevant evidence, has come to a conclusion that the job workers were the manufacturers and the respondent - the loan licensee, was not the manufacturer, we see no reason to interfere with the said findings of fact, especially when the same is correct and not perverse. We are, therefore, in agreement with the findings arrived at by the Tribunal that the job workers are the manufacturers.

23. Once it has been determined that the job workers are the manufacturers, the assessable value of the goods would be a sum total of cost of raw material, labour charges and profit of the job workers, as per circular No.619/10/2002-CX dated 19th February, 2002 and the law

laid down by this Court in the case of **Pawan Biscuits** (supra) and other cases. In such a case, the price at which the respondent brand owner sells its goods would not be the assessable value because the duty is to be paid at the stage at which the goods are manufactured and not at the stage when the goods are sold.

24. For the aforesaid reasons, we do not agree with the submissions made on behalf of the learned counsel appearing for the Revenue. We dismiss all the appeals along with the main appeal, with no order as to costs.

.....J.
[ANIL R. DAVE]

.....J.
[DIPAK MISRA]

New Delhi;
April 7, 2015.